

NorthPoint Communications, Inc.  
Bell Atlantic - New York

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

RECEIVED

NOV - 8 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CC Docket No. 99-295

In the Matter of )  
Application of Bell Atlantic Pursuant )  
To Section 271 of the Telecommunications )  
Act of 1996 to Provide In-Region, )  
InterLATA Services in New York )

**REPLY COMMENTS OF NORTHPOINT COMMUNICATIONS, INC.**

Michael E. Olsen  
Glenn A. Harris  
NorthPoint Communications, Inc.  
303 Second Street, South Tower  
San Francisco, CA 94108  
415/403-4003 (Tel.)  
415/403-4004 (Fax)

Richard M. Rindler, Esq.  
Larry A. Blosser, Esq.  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, NW Suite 300  
Washington, DC 20007  
202/424-7500 (Tel.)  
202/424-7643 (Fax)

November 8, 1999

No. of Copies rec'd 046  
List ABCDE

**TABLE OF CONTENTS**

<b><u>Description</u></b>	<b><u>Page #</u></b>
Introduction and Summary.....	1
The Commission Should Deny BA-NY’s Application So That The New York Public Service Commission DSL Collaborative Can Complete Its Work With The Full Cooperation of BA-NY.....	2
Conclusion.....	4

**I. Introduction and Summary**

There is broad consensus that Bell Atlantic – New York (“BA-NY”) has not *yet* provided competitive carriers offering digital subscriber line (“DSL”) services the requisite access to preordering, ordering and provisioning functions.<sup>1</sup> Although BA-NY has made tremendous progress, and now appears committed to resolve outstanding issues with respect to competitive DSL services, the Commission should deny BA-NY’s application for in-region interLATA authority in New York until BA-NY has demonstrated its compliance with its legal obligations set forth in Section 271 of the Telecommunications Act of 1996.

**II. The Commission Should Deny BA-NY’s Application So That The New York Public Service Commission DSL Collaborative Can Complete Its Work With The Full Cooperation Of BA-NY.**

After consistent refusals to work cooperatively with competitive local exchange carriers (“CLEC”) offering DSL services, in July 1999 BA-NY began to work with CLECs in the New York Public Service Commission (“NYPSC”) “DSL Collaborative” to resolve the remaining DSL issues.<sup>2</sup> In its Evaluation submitted to the Commission on October 19, 1999, the NYPSC stated the following: “...through our DSL collaborative, BA-NY is expected to improve its performance under newly implemented procedures.” (NYPSC Evaluation, p.5) The NYPSC continues: “We are optimistic that the attention

---

<sup>1</sup> See Evaluation of the United States Department of Justice (“DOJ Evaluation”) at 23-28, Comments of Eliot Spitzer, Attorney General of the State of New York (“NY AG Comments”) at 15-16. See also Comments of Association for Local Telecommunication Services (“ALTS”) at 32-38, Comments of Competitive Telecommunications Association (“CompTel”) at 22-26, Comments of @link Networks, Inc. at 2-4, Comments of AT&T Corp. at 29-31, Comments of CoreComm Limited et al. at 5-12, Comments of Covad Communications Company at 8-32, Comments of DSL.net, Inc. at 5-6, Comments of e.Spire Communications, Inc. et al. at 14-15, Comments of Focal Communications of New York at 5-6, Comments of Intermedia Communications, Inc. at 7-8, Comments of KMC Telecom, Inc. at 6-8, Comments of MCI WorldCom, Inc. at 31-36, Comments of Network Access Solutions at 4-10, Comments of NorthPoint Communications, Inc. at 3-17, Comments of Prism Communications at 20-21, Comments of Rhythms NetConnections Inc. et al. at 7-21, Comments of Sprint Communications Company L.P. at 8-17.

<sup>2</sup> New York Case 97-C-0271.

focused on xDSL provisioning [in the DSL Collaborative meetings] *will resolve many of the outstanding issues.*” (NYPSC Evaluation, p. 94, emphasis added). Each of these statements by the NYPSC indicates the expectation of BA-NY’s future compliance, and further suggests that BA-NY has not yet met its obligations with regard to competitive DSL services. The expectation of future compliance is not evidence of current compliance.

NorthPoint concurs with the recommendation of the Department of Justice (“DOJ”) that the Commission should deny BA-NY’s application until the corrective measures are fully implemented. The DOJ stated in relevant part:

There has also been great progress in opening the market to competition through the use of unbundled network elements, but in this area, a few significant problems remain. Bell Atlantic has not yet demonstrated that it can adequately provide access to unbundled local loops, either for traditional voice services or for digital subscriber line (“DSL”) technology used to provide a variety of advanced services....These remaining problems are few in number, but they will impose a significant constraint on competition if they are not adequately resolved.

There is reason to believe that these remaining problems can be solved in a short time, and Bell Atlantic, commendably, appears to have taken or committed to take action to do so. But Bell Atlantic filed this application before those actions were completed and therefore before their hoped-for success can be demonstrated....Bell Atlantic should be required to remove the few but important obstacles to local competition that remain in New York *before it enters the long distance market.*

DOJ Evaluation, pp. 2-3, emphasis added.

While the DOJ also suggested that the Commission could consider granting the application, subject to clear post-271 conditions, as an alternative to denying the application, the DOJ also warned that such an approach 1) would provide less incentive

than pre-271 regulatory mechanisms,<sup>3</sup> 2) might not be supportable under the law,<sup>4</sup> 3) might encourage other Bell Operating Companies (“BOCs”) to submit their Section 271 applications to the Commission based on promises of future compliance,<sup>5</sup> and 4) would require clear mechanisms to assess whether the BOC has complied with the conditions.<sup>6</sup> NorthPoint believes that post-271 regulations would prove insufficient to adequately motivate BA-NY to continue its progress in the NYPSC DSL Collaborative. BA-NY is now cooperating with DSL CLECs because the DSL Collaborative was instituted as part of the NYPSC Section 271 proceeding. To remove Section 271 authority as a motivation for BA-NY’s cooperation at this time would likely diminish BA-NY’s incentive to work cooperatively with DSL CLECs to resolve the few remaining issues. The DSL Collaborative is making progress. The Commission should facilitate that progress by not removing BA-NY’s incentive to receive in-region interLATA authority.

Further, granting BA-NY authority prior to actual compliance with its Section 271 obligations would reward BA-NY for its long-standing refusal to implement the systems and processes requested by DSL CLECs - until the issues were expressly identified by the NYPSC in its §271 proceeding. BA-NY, and BA-NY alone, bears the responsibility for not yet having complied with its §271 obligations.

---

<sup>3</sup> DOJ Evaluation at 40.

<sup>4</sup> *Id.* at 43.

<sup>5</sup> *Id.* at 40 (fn 107).

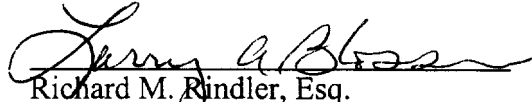
<sup>6</sup> *Id.* at 43.

**III. Conclusion**

While NorthPoint is eager for the Commission to reward BA-NY for successfully opening the local markets to competition, BA-NY has not yet done so. BA-NY should be required to first demonstrate its compliance with Section 271 *before* it receives in-region interLATA authority.

Respectfully submitted,


Michael E. Olsen  
Glenn A. Harris  
NorthPoint Communications, Inc.  
303 Second Street, South Tower  
San Francisco, CA 94108  
415/403-4003 (Tel.)  
415/403-4004 (Fax)

  
Richard M. Rindler, Esq.  
Larry A. Blosser, Esq.  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, NW Suite 300  
Washington, DC 20009  
202/424-7500 (Tel.)  
202/424-7643 (Fax)

Dated: November 8, 1999.

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Reply Comments of NorthPoint Communications, Inc." was served on this 8<sup>th</sup> day of November, 1999, via U.S. first-class, postage prepaid mail, on each of the persons listed below.

  
Rose Crisostomo

MCI WorldCom, Inc.  
Mary L. Brown  
Keith L. Seat  
Karen T. Reidy  
1801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

MCI WorldCom, Inc.  
George S. Ford  
1801 Pennsylvania Avenue, N.W.,  
Washington, D.C. 20006

MCI WorldCom, Inc.  
Kim Scardino  
Kim Wild  
Robert Lopardo  
Five International Drive  
Rye Brook, NY 10573-1095

Allegiance Telecom of New York  
Lela Beheri  
1950 Stemmons Freeway, Suite 3026  
Dallas, TX 75207

AT&T  
Maureen Swift  
645 Martinville Road  
Liberty Corners, NJ 07938

AT&T  
Richard Rubin  
295 North Maple Avenue  
Room 325213  
Basing Ridge, NJ 07920

AT&T  
Harry M. Davidow  
Clifford Williams  
32 Avenue of the Americas, Room 2700  
New York, NY 10013

AT&T  
Eileen M. Halloran  
32 Avenue of the Americas  
Room 1735  
New York, NY 10036

Rhythms Links, Inc.  
Jeffrey Blumenfeld, General Counsel  
6933 S. Revere Parkway  
Englewood, CO 80112

Rhythms Links, Inc.  
Robert Williams, Director  
8605 Westwood Center Drive  
Suite 300  
Vienna, VA 22182

NY State Dept. of Public Svc  
James D. Bennett  
Debra Renner  
Leonard A. Weiss  
Neal N. Galvin  
Penny Rubin  
Three Empire State Plaza  
Albany, NY 12223-1350

E.Spire Communications Services, Inc.  
Riley M. Murphy  
James C. Falvey  
133 National Business Parkway  
Suite 200  
Annapolis Junction, MD 20701

NEXTLINK New York  
A. Michael Schwarzwald  
1730 Rhode Island Avenue, N.W.  
Suite 1000  
Washington, D.C. 20036

NEXTLINK Communications, Inc.  
Michael D'Angelo  
45 Eisenhower Drive  
Paramus, NJ 07652

Arent Fox Kintner Plotkin & Kahn, PLLC  
Douglas G. Bonner  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036-5339  
for: Omnipoint Communications, Inc.

Omnipoint Communications, Inc.  
11 High Point Drive  
Wayne, NJ 07470

Teligent  
Edward B. Krachmer  
Laurence E. Harris  
David S. Turetsky  
Terri B. Natoli  
Carolyn K. Stup  
8065 Leesburg Pike  
Suite 400  
Vienna, VA 22182

Lawler, Metzger & Milkman, LLC  
A. Richard Metzger  
Michael B. Hazzard  
1909 K Street, N.W.  
Suite 820  
Washington, D.C. 20006  
for: Allegiance Telecom, Inc.

Allegiance Telecom, Inc.  
Robert W. McCausland, V.P.  
1950 Stemmons Freeway  
Suite 3026  
Dallas, TX 75207-3118

Prism Communication Services, Inc.  
Randall B. Lowe, Chief Legal Officer  
Julie A. Kaminski, Deputy Chief Counsel  
Renee R. Crittendon, Deputy Chief Counsel  
1667 K Street, N.W., Suite 200  
Washington, D.C. 20006

League of United Latin American Citizens  
Brent Wilkes  
1133 20<sup>th</sup> Street, N.W.  
Suite 750  
Washington, D.C. 20036

Partners in Education  
Daniel W. Merenda, President  
901 North Pitt Street  
Suite 320  
Alexandria, VA 22314-1536

Lawler, Metzger & Milkman, LLC  
A. Richard Metzger  
Michael B. Hazzard  
1909 K Street, N.W.  
Suite 820  
Washington, D.C. 20006L  
for: Z-Tel Communications Services, Inc.

Z-Tel Communications Services, Inc.  
Robert A. Curtis, Senior Vice President  
601 South Harbour Island Blvd.  
Tampa, FL 33602

EXCEL COMMUNICATIONS, INC.  
James M. Smith  
1133 Conn. Avenue, N.W.  
Suite 750  
Washington, D.C. 20036



GSA  
Michael J. Ettner, Sr. Asst. Gen. Counsel  
George N. Barclay, Assoc. Gen. Counsel  
1800 F. Street, N.W.  
Room 4002  
Washington, D.C. 20405

CoreComm Limited  
Christopher Holt, Asst. Gen. Counsel  
110 East 59<sup>th</sup> Street  
26<sup>th</sup> Floor  
New York, NY 10022

Mintz, Levin, Cohn, Ferris, Glovsky  
James L. Casserly  
Casey B. Anderson  
Uzoma C. Onyeiji  
701 Penn. Avenue, N.W.  
Suite 900  
Washington, D.C. 20004  
for: CoreComm Limited

Choice One Communications, Inc.  
Kim Robert Scovill  
100 Chestnut Street  
Suite 700  
Rochester, NY 14534

Lightpath  
James L. Dolan, President and CEO  
111 New South Road  
Hicksville, NY 11801

Global NAPS, Inc.  
William J. Rooney, Vice President  
10 Merrymount Road  
Quincy, MA 02169

Cole, Raywid & Breverman, LLC  
Christopher W. Savage  
1919 Penn. Avenue, N.W.  
Suite 200  
Washington, D.C. 20006  
for: Global NAPS, Inc.

Shook, Hardy & Bacon, LLP  
Rodney L. Joyce  
J. Thomas Nolan  
600 14<sup>th</sup> Street, N.W.  
Washington, D.C. 20005-2004  
for: Network Access Solutions

Closecall America, Inc.  
Tom Marzerski, President  
100 Helfenbein Lane  
Suite 230 D  
Chester, MD 21619

Dow, Lohnes & Albertson, PLLC  
John s. Logan  
J.G. Harrington  
1200 New Hampshire Avenue, N.W.  
Suite 800  
Washington, D.C. 20036  
for: Closecall America, Inc.

Consortium for School Networking  
Bill Schmid, Chairman  
1555 Conn. Avenue, N.W.  
Suite 200  
Washington, D.C. 20036

RCN Telecom Services, Inc.  
Joseph Kahl  
105 Carnegie Center  
Princeton, NJ 08540

American Foundation for the Blind  
Scott Marshall, Vice President  
1615 M. Street, N.W.  
Suite 250  
Washington, D.C. 20036

Organization of Chinese Americans, Inc.  
Daphne Kwok, Executive Director  
1001 Conn. Avenue, N.W.  
Suite 601  
Washington, D.C. 20036

Organizations Concerned About Rural Ed.  
Dale Lestina, President  
1201 16<sup>th</sup> Street, N.W.  
Suite 510  
Washington, D.C. 20036

National Small Business United  
Todd McCracken, President  
1156 15<sup>th</sup> Street, N.W.  
Suite 1100  
Washington, D.C. 20005-1711

Eugene F. Sullivan, Esq.  
Two Eagle Square, Suite 400  
Concord, New Hampshire 03301  
for: Destek Networking Group, Inc.

Philip James Walker, Esq.  
301 Stark Highway North  
Dunbarton, New Hampshire 03045  
for: Destek Networking Group, Inc.

Intermedia Communications, Inc.  
Prince Jenkins, Sr. Policy Counsel  
3625 Queen Palm Drive  
Tampa, FL 33619

DSL.net, Inc.  
Wendy Bluemling, Dir. Reg. Affairs  
545 Long Wharf Drive  
5<sup>th</sup> Floor  
New Haven, Connecticut 06511

Keep America Connected  
Cleo Manuel, Executive Director  
P.O. Box 27911  
Washington, D.C. 20005

Fisher Wayland Cooper Leader & Zaragoza  
David S. Konczal  
Glenn S. Richards  
2001 Penn. Avenue, N.W.  
Suite 400  
Washington, D.C. 20006  
for: National ALEC Association

National Consumers League  
Linda F. Golodner, President  
1701 K Street, N.W.  
Suite 1200  
Washington, D.C. 20006

AARP  
Martin A. Corry, Director Federal Affairs  
601 E Street, N.W.  
Washington, D.C. 20049

Hyperion Telecommunications, Inc.  
Janet Livengood, Esq.  
d/b/a ADELPHIA Business Solutions  
500 Thomas Street, N.W.  
Suite 400  
Bridgeville, PA 15017-2838

AT&T  
Robert E. Kargoll, Esq.  
795 Folsom Street  
Room 211  
San Francisco, CA 94107

State of New York  
Office of the Attorney General  
Eliot Spitzer, Attorney General  
Keith H. Gordon, Asst. Attorney General  
Mary Ellen Burns, Asst. Attorney General  
120 Broadway  
New York, NY 10271

Sprint Communications Co., LP  
Karen R. Sistrunk, Esq.  
1850 M. Street, N.W.  
Suite 1100  
Washington, D.C. 20036

Sprint Communications Co, LP  
Michael J. Nelson  
7301 College Boulevard  
Overland Park, KS 66210

Willkie Farr & Gallagher  
Sue D. Blumenfeld, Esq.  
Thomas Jones, Esq.  
Renee Challahan, Esq.  
Angie Kronenberg, Esq.  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Suite 600  
Washington, D.C. 20036  
for: Sprint Communications Co., LP

Association for Local Telecom Services  
Jonathan Askin  
888 17<sup>th</sup> Street, N.W.  
Suite 900  
Washington, D.C. 20006

Competition Policy Institute  
Debra Berlyn  
1156 15<sup>th</sup> Street, N.W.  
Suite 310  
Washington, D.C. 20005

Covad Communications Company  
Susan Jin Davis  
Hamilton Square  
600 14<sup>th</sup> Street, N.W.  
Suite 750  
Washington, D.C. 20005

Tennessee Regulatory Authority  
Richard Collier, Chief Counsel  
460 James Robertson Pky.  
Nashville, TN 37243-0505

National Black Chamber of Commerce  
Harry C. Alford, President & CEO  
1350 Connecticut Avenue, N.W.  
Suite 825  
Washington, D.C. 20036

Competitive Telecommunications Assoc.  
Carol Ann Bischoff, Exec Vice President  
1900 M. Street, N.W.  
Suite 800  
Washington, D.C. 20036

Kelley Drye & Warren, LLP  
Robert Aamoeth  
1200 19<sup>th</sup> Street, N.W.  
Suite 800  
Washington, D.C. 20036  
for: Competitive Telecom Assoc.

MainePOINT Project Director  
Barbara Keefe  
University of Main System  
Network, GBSD  
P.O. Box 799  
Portland, ME 04104

Dickstein Shapiro Morin & Oshinsky LLP  
Valerie M. Furman  
2101 L Street, N.W.  
Washington, D.C. 20037-1526  
for: ICG Telecom Group, Inc.

Virginia M. Santo  
99 Perry Street  
Hempstead, New York 11550

United Seniors Health Cooperative  
Anne Werner, President & CEO  
409 Third Street, N.W.  
Suite 200  
Washington, D.C. 20024-3204

@link Networks, Inc.  
Theodore Lasser, President  
20825 Swenson Drive  
Suite 150  
Waukesha, Wisconsin 53186